

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts

D.T.E. 01-20

**MOTION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

AT&T Communications of New England, Inc. ("AT&T") requests that the Department of Telecommunications and Energy ("Department") grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D. Specifically, AT&T requests that the documents requested in VZ-ATT/WC 3-1 be granted protective treatment because they contain competitively sensitive and highly proprietary information and trade secrets. These documents include: (1) a switch contract between AT&T and Lucent provided in response to VZ-VA 1-1, and (2) AT&T's response to VZ-VA 1-1 in CC Docket No. 00-251 before the Federal Communications Commission.

These materials have been provided to the Department, to Verizon and to those parties that have signed a protective agreement with AT&T in this docket. If these materials are placed in the public record, however, AT&T's competitors would be able to use them to gain an unfair competitive advantage.

LEGAL STANDARD.

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has recognized that competitively sensitive information is entitled to protective status. *See, e.g., Hearing Officer's Ruling On the Motion of CMRS Providers for Protective Treatment and Requests for Non-Disclosure Agreement*, D.P.U. 95-59B, at 7-8 (1997) (recognizing that competitively sensitive and proprietary information should be protected and that such protection is desirable as a matter of public policy in a competitive market).

II. ARGUMENT.

The AT&T – Lucent switch contract and AT&T's response to VZ-VA 1-1 contain competitively sensitive and proprietary information and trade secrets, as well as valuable commercial information that competitors could unfairly use to their own advantage. Thus, these materials should be granted proprietary treatment and should not be placed on the public record.

The switch contract and the response to VZ-VA 1-1 include vendor pricing and switch counts for AT&T's network, information that is highly proprietary for several reasons. First, the switch contract contains pricing information of the kind that the Department has previously recognized is proprietary and should not be made available on the public record. *See, e.g., Colonial Gas Company*, D.P.U. 96-18 at 4 (1996). Indeed, in the present docket, Verizon has already sought protection of similar pricing information. *See Verizon's Motion for Confidential*

Treatment filed August 8, 2001, at 9. According to Verizon, “[t]he public disclosure of information, such as terms and pricing, contained within the agreement between Verizon MA and the third party vendor would compromise the integrity of the agreement. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.” *Id.* Such arguments are equally applicable here.

Second, the switch contract and response contain information relating to the type of and extent of the switches AT&T uses in its network. This type of information is highly sensitive and would provide AT&T’s competitors with valuable insight into AT&T’s market strategy. For example, whether a CLEC has constructed its own switching network or whether it relies on a third party to provide such a network for its use will give insight to the CLEC’s competitors into how deep the CLEC’s market penetration is and the CLEC’s future plans for expansion. Such information is highly sensitive and would provide the CLEC’s competitors with an invaluable and unfair competitive advantage. This is exactly the type of information that G.L. c. 25, § 5D, was designed to protect and that the Department has traditionally protected.

Third, the switch contract and response would provide AT&T’s competitors with knowledge of whether AT&T has engaged in extensive development of new facilities and whether AT&T will have to make substantial investments in the near future. The Department has recognized that a company’s levels of investment is proprietary information because “disclosure of this information could assist [the company’s] competitors in development of sales and investment strategies.” *See* Hearing Officer Ruling on Verizon Massachusetts’ Motions for Confidential Treatment, D.T.E. 01-31 (August 29, 2001) at 4 (granting Verizon motion in part).

It also might provide AT&T's competitors with insight into AT&T's current market penetration and expected future market penetration.

Finally, this information is not publicly available, is not shared with non-AT&T employees for their personal use and is not considered public information. Any dissemination of this information to non-AT&T employees, such as contract consultants, is done so on a proprietary basis. Even AT&T employees who review these materials are subject to non-disclosure agreements and are allowed to use them for internal business reasons only.

Conclusion.

For these reasons, AT&T requests in accordance with G.L. c. 25, § 5D, that the Department grant protection from public disclosure of: (1) the switch contract between AT&T and Lucent provided in response to VZ-VA 1-1; and (2) the response to VZ-VA 1-1.

Respectfully submitted,

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